

BEFORE THE HIGH COURT OF GUJARAT AT AHMEDABAD.

SPECIAL CIVIL APPLICATION NO.6520 OF 1993.

Date of Decision:-12-1-1996.

For Approval and Signature

THE HON'BLE MR. JUSTICE N.N. MATHUR.

1. Whether Reporters of Local Papers may be allowed to see the Judgment ?
2. To be referred to the Reporters or not?
3. Whether their Lordships wish to see the fair copy of judgment?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 or any order made thereunder ?
5. Whether it is to be circulated to the Civil Judges ?

Mr. Ashok K. Padia, Advocate, for the petitioner.  
Miss. P. S. A.G.P. for the respondents.

Coram:-N.N Mathur, J.

Date:--12-1-1996.

Oral Judgemnt:-

The petitioner is a small artist arranging entertainment programmes in the name and style of "Manish Manoranjan". He wanted to arrange a musical concert of Maheshkumar And Party at Surendranagar on 21-5-1981. He, therefore, obtained necessary licence from the concerned authorities. At the time of applying for licence rates of the tickets were given. The Mamlatdar had an authority to collect the advance entertainment tax. However, it was not done for the reason that in view of the rate of the ticket fixed below the rate taxable for the entertainment, the petitioner was not liable pay the

entertainment tax. It is the say of the petitioner that unfortunately the show was flopped which incurred the loss to him inasmuch as even proposed tickets could not be sold out. The petitioner submitted the Return in accordance with Rule 7(2) of the Gujarat Entertainment Rules. According to the petitioner the show was held on 21-5-1981 and within 15 days he had submitted the the Return. Further, no assessment took place rightly because the petitioner was not liable to pay the entertainment tax because of the low fees of the ticket. It is the further say of the petitioner that by a notice dated 14/16-9-1987 the petitioner was called upon by the respondent authorities as to why the assessment should not be undertaken and entertainment tax be recovered from him.

2. No reply to the Special Civil Application has been filed. However, Miss Parmar, Learned A.G.P. submits that the petitioner was liable to pay the entertainment tax as the rate of the ticket was not below the rate fixed for liability to pay the entertainment tax. She further submits that the petitioner had also not submitted the accounts within a period of two weeks.

3. In response to the show-cause notice dated 14/16-9-1987 the petitioner has stated that he was not liable to pay the entertainment tax. Mr. A.K. Padia, learned Advocate for the petitioner submits that the notice dated 14/16-9-1987 Annexure - 'A' is without jurisdiction inasmuch as the notice for assessment or reassessment can be issued only within a period of three weeks from the date on which the entertainment tax leviable in view of the provisions of Section 9 of the Gujarat Entertainment Act, 1977 and Rule 15 of the Gujarat Entertainment Rules, 1979. Section 9(1) of the Gujarat Entertainment Act, 1977 provides that "Where for any reason any payment for admission to any entertainment or any complimentary ticket has escaped assessment to tax, the prescribed officer may, subject to the provisions of sub-section 3 and at any time within such period as may be prescribed, assess to the best of his judgment the tax due on such payment or ticket, after making such inquiry as he may consider necessary." Rule 9 of the Gujarat Entertainment Rules, 1979 reads as follows :-

- "9. Order of assessment:- (1) The assessment of tax in respect of an entertainment shall be made within 15 days after the return in respect of such entertainment is furnished.
- (2) After the assessment is made the

Prescribed Officer shall serve a notice for payment of tax which shall be in Form 7."

4. Thus, the proceedings under Section 9 of the Gujarat Entertainment Act can be initiated within a period of 3 years from the date of the tax due in view of limitation provided under Rule 15 of the Gujarat Entertainment Rules, 1979. In any case, it is not in dispute that the show was held on 21-5-1981 and the show-cause notice was issued on 14/16-9-1987 i.e. after more than 6 years. In my view there is force in the contention of the learned Advocate for the petitioner. This contention deserves to be accepted. The impugned notice dated 14/16-9-1987 is illegal being barred by limitation.

5. In view of the aforesaid, this Special Civil Application is allowed and the notice dated 14/16-9-1987 annexure 'A' and all proceedings in question thereof are hereby quashed and set aside. Rule is made absolute. There shall be no order as to cost.

-0-0-0-0-0-